DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

Food and Drug Administration
Rockville MD 20857

APR 10 1997

Re: ProstaScint™
Docket No. 97E-0107

Stephen G. Kunin
Deputy Assistant Commissioner for
Patent Policy and Projects
Office of the Assistant Commissioner for Patents
U.S. Patent and Trademark Office
Crystal Park Building 2, Suite 919
Washington, D.C. 20231

Dear Mr. Kunin:

This is in regard to the application for patent term extension for U.S. Patent No. 5,162,504 filed by Cytogen Corporation under 35 U.S.C. § 156. The biological product identified in the patent extension application is ProstaScint™ (capromab pendetide), which was assigned Product License Application (PLA) No. 95-0041.

A review of the Food and Drug Administration's official records indicates that this product was subject to a regulatory review period before its commercial marketing or use, as required under 35 U.S.C. § 156(a)(4). Our records also indicate that it represents the first permitted commercial marketing or use of the product, as defined under 35 U.S.C. § 156(f)(1), and interpreted by the courts in Glaxo Operations UK Ltd. v. Quigg, 706 F. Supp 1224 (E.D. Va. 1989), aff'd, 894 F. 2d 392 (Fed. Cir. 1990).

The PLA was approved on October 28, 1996, which makes the submission of the patent term extension application on December 20, 1996, timely within the meaning of 35 U.S.C. § 156(d)(1).

Should you conclude that the subject patent is eligible for patent term extension, please advise us accordingly. As required by 35 U.S.C. § 156(d)(2)(A) we will then determine the applicable regulatory review period, publish the determination in the Federal Register, and notify you of our determination.

Please let me know if we can be of further assistance.

Sincerely,

for Ronald L. Wilson, Director
Health Assessment Policy Staff
Office of Health Affairs

cc: W. Scott McNees
Cytogen Corporation
600 College Road East
Princeton, NJ 08540